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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,416	10/15/2001	Patrice Duvert	P/3610-17	9737
2352	7590	10/21/2003		
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
			EXAMINER BHAT, NINA NAM	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/913,416	DUVERT ET AL.	
	Examiner	Art Unit	
	N. Bhat	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-20 and 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

### DETAILED ACTION

1. The Examiner acknowledges applicant's first and second preliminary amendment. Applicant is kindly suggested in the next correspondence to re-present the claims using the new amendment practice as we have already moved into the electronic file wrapper arena to avoid confusion during prosecution.

2. Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 25 lacks clarity in that applicant recites a fruit treated with the composition of claim 1. Claim 25 does not further limit claim 1 and therefore is an improper composition claim. Applicant is requested to draft the claim as a product by process claim depending from claim 20 or should draft an independent claim, which recites the fruit, which includes the specifics of the composition as a coated fruit.

Appropriate correction is required.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

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3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1-5, 17-19 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/33381.

WO 98/33381 teaches a fungicide composition comprising a fungicide, which inhibits mitochondrial respiration as well as at least one fungicide compound inhibiting sterol biosynthesis. WO 98/33381 teach fungicidal mixtures which include quinazolinones and compounds which inhibits fungal mitochondrial respiration as well as including effective amounts of fungicidal compounds that control fungal diseases by inhibiting sterol biosynthesis. [Note the abstract and Page 3, lines 33-38] The combinations of fungicides are provided in amounts sufficient to provide a fungicidal effectiveness greater than the sum of fungicidal effectiveness used alone.

6. Claims 7-16 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/33381 in combination with Roman et al.

As stated above WO 98/33381 teaches a fungicide composition comprising a fungicide, which inhibits mitochondrial respiration as well as at least one fungicide compound inhibiting sterol biosynthesis.

However, WO 98/33381 does not specifically teach treating fruit but uses the fungicide composition in treating plants.

Orman et al. teaches a method of treating fresh fruit to prevent and retard growth of fungus by spray coating the fruit with a fungicide composition. The fungicide is a sodium orthophenylphenate, which is used specifically as an antifungal agent in the

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treatment of fruit. The fruit is treated with the fungicide composition by falling liquid contact.

It would have been obvious from the teachings of WO 98/33381 and Orman et al. to treat fruit with an fungicide composition which controls phytopathogenic fungi which is capable of infesting fruit which includes on fungicide compound inhibiting mitochondrial respiration and at least one fungicide compound inhibiting sterol biosynthesis, because WO 98/33381 teaches a fungicide composition which exhibits both inhibition of mitochondrial respiration and sterol biosynthesis, the fungicide is used on treating plants, there is nothing in WO 98/33381 which would preclude on of ordinary skill in the art to use this as an fungicide composition on fruits as WO 98/33381 teaches that the fungicide composition can be used on plants, portions of plants seedlings or seeds of the plant. The fungicide when used on a plant is sprayed on the plant as a coating to effectively control the phytopathogenic fungi. Orman teaches a method of treating citrus fruit by spraying the fungicide composition or scrubbing and using a falling liquid cascade treatment of fruit. An SOPP type of fungicide is used which has been effective in treating citrus, to use a different type of fungicide in the process as claimed by Orman would have been an obvious substitution and within the purview of the ordinary artisan, because Orman teaches a process of providing a falling liquid which contains a fungicide which will be present in quantities to both prevent and retard the growth of fungus and remove debris from the fruit in a one step drenching process and to use the fungicide composition as taught by WO 98/33381 for its known control of

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phytopathogenic fungi would have been obvious to one having ordinary skill in the art at the time the invention was made.

7. Claim 6 is free of the prior art, as the prior art does not teach a fungicide composition, which comprises imazalil in combination with fenamidone.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. WO93/22921 teaches a fungicidal composition comprising a carrier or diluents. Knauf-Beiter et al. teach fungicidal combinations comprising phenyl acrylic acid derivatives, which is effective in combating or preventing fungal diseases of crop plants. Creason et al.'880 and '859 teach a system for applying a coating of wax and fungicide to the surface of fruit in two stages. Kapoor et al. teach post harvest treatment of bananas with gibberellins mixed with a fungicide.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879.

The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat  
Primary Examiner  
Art Unit 1761